Express Company v. *Owens,* 146 Ala. 412, must be adopted. In that case the court squarely overruled an earlier decision—*Louisville & Nashville Railroad Company* v. *Sherrod,* 84 Ala 178—which had held that "Limitations as to value do not come under the operation of the rule that a carrier cannot, by special contract, exempt himself from liability for the consequences of his own negligence, and ordinarily are not calculated to induce negligence. To the amount of the agreed valuation the carrier is responsible for loss occasioned by his neglect * * * Such special contract is in the nature of an agreement to liquidate the damages, proportionately to the compensation received for the carriage and the responsibility of safely carrying and delivery." In overruling this decision the court said: "The agreement urged in the *Sherrod* case makes the degree of care requisite in the handling of goods depend, not on the nature of the thing to be carried—which ought to be the test of degree of care to be used by all persons or corporations pursuing the business of common carriers, even where a lawful contract limiting liability exists—but on the amount of compensation to be paid. * * * But would it not be a very dangerous rule which permits care to be measured by value? It would lead to a holding that the carrier owes but a slight degree of care when the thing to be carried is of small value intrinsically or by an agreed valuation, and the rule would be as fluctuating as is the value of the things carried. * * * It seems to us that such contracts do induce a want of care, for the highest incentive to the exercise of due care rests in a consciousness that a failure in this respect will fix liability to make full compensation for any injury resulting from the cause. * * * The rule of law being established, as we have seen it is, that the defendant company could not lawfully have contracted with the plaintiff that it would in no event be liable for any part of the value of the property lost or destroyed, can the limitation of its liability to $50 be upheld in this court, if it should appear that its loss resulted from the negligence of the company, and that it was in fact worth 30 times that amount, as the court found it to be? We think not. To our minds it is clear that the two kinds of stipulation—that for total and that providing for partial, exemption from liability for the consequences of the carrier's negligence—stand upon the same ground and must be tested by the same principles." E. R. S.

VALIDITY OF CORPORATE BY-LAW VESTING IN DIRECTORS THE DISCRETIONARY POWER OF DENYING STOCKHOLDERS THE RIGHT TO EXAMINE THE CORPORATE BOOKS.—There seems to be a great paucity of judicial interpretation upon the question here involved. The Supreme Court of Delaware has, however, been confronted with the problem in the very recent case of *State ex rel. Lindsey* v. *Jessup & Moore Paper Co.* (1909), — Del. —, 72 Atl. 1057, and has solved it in both a satisfactory and unmistakable manner. In this case, plaintiff, a stockholder in the defendant corporation, applied for an alternative writ of mandamus to compel the defendant to permit plaintiff to inspect the corporate books. Plaintiff set up sufficient facts to entitle him to the relief prayed for. Defendant relied mainly on a corporate by-law, which absolutely vested in the discretion of the directors the right either to forbid or to permit the

stockholders from having access to the corporate books, and which made their decision final. Plaintiff had been refused permission to make the desired inspection. *Held,* that mandamus should issue.

The above case is not, it is believed, in conflict with any previously adjudged case, though it would seem to be contrary to a statement of SIMONTON, D.J., in *Ranger* v. *Champion Cotton-Press Co. et al.,* 51 Fed. 61, to the effect that in this country a shareholder has the right, under proper safeguards, to inspect the books of the corporation, *unless the charter or by-laws otherwise provide.* The proviso about "by-laws" may be considered as a mere *obiter dictum* as no by-laws were involved in the case and the remark was therefore in no wise necessary to the decision of the case. The remark is, however, most disconcerting, and had there been a by-law in the *Ranger* case similar to that in the principal case, there is ample foundation for the belief that the federal court would have held it effective, and would have further held that it was competent for the shareholders to so delegate this authority to the directors. Indeed, looking at the question from a contractual view only it would seem to be competent for the shareholders to so delegate this power to the directors. For this reason, the courts holding to the view of the principal case are naturally compelled to base their conclusions on the less stable doctrines of public policy. Here again, public policy, though not always strictly logical, offers a safe, sane and equitable solution of the problem.

Of course, were there a statute in Delaware, as there is in many of the states, giving to the shareholders the right to examine the corporate books, the question would have been one easy of solution. If a corporation undertakes to make by-laws in contravention of some statute, they are ultra vires and of no effect. *Briggs* v. *Earl,* 139 Mass. 473, 1 N. E. 847; *Presbyterian Mut. Assur. Fund* v. *Allen,* 106 Ind. 593, 7 N. E. 317; *Bergman* v. *St. Paul Mut. Bldg. Assoc.,* 29 Minn. 275, 13 N. W. 120; *Rex* v. *Cutbush,* 4 Burr. 2204; *Chicago City R. Co.* v. *Allerton,* 18 Wall. 233; *Harscots Case,* Comb. 202 (per HOLT, C.J.). The only statutory right of the stockholders in Delaware is *the* right to examine the stock ledgers of the corporation, and as this by no means includes all the books the court found it necessary to revert, in part at least, to the common law doctrines. The Supreme Court of Delaware held that notwithstanding the by-law it was the duty of the directors to afford every reasonable opportunity for the shareholders to get the information sought for. The by-law was considered both unreasonable and unlawful. The court further said that the books should not be subject to "unnecessary, unreasonable or untimely inspection."

The best and practically the only other discussion of the question is found in *State ex rel. Burke* v. *Citizens' Bank of Jennings,* 51 La. Ann. 426, 25 South 318. Here the facts were substantially the same as in the principal case, and the Supreme Court of Louisiana held that the right of a shareholder with a laudable object to accomplish, and an actual interest in the corporate affairs, to an inspection of the books, is given by the fundamental law, and that any statute securing the right would merely be declaratory of the common law doctrine. It is the right to refuse inspection and not the right to inspect that must be given by statute. Many other cases involve points somewhat similar

but in no other case we have been able to find has the exact question been raised. A question somewhat similar in character has arisen where the validity of by-laws limiting the rights of the stockholders to transfer their shares of stock has been attacked. They have generally been held invalid. *Bloede Co.* v. *Bloede,* 84 Md. 129, 57 Am. St. R. 373; *Moore* v. *Bank of Commerce,* 52 Mo. 377; *In re Klaus,* 67 Wis. 401. But see contra, *Barrett* v. *King et al.,* 181 Mass. 476, 63 N. E. 934.

The essentials to the validity of corporate by-laws are nicely summed up in ANGELL & AMES, CORPORATIONS, p. 373. "The legislative power of a corporation is not only restricted by the constitutional and statute law of the state in which it is established, but by the general principles and policy of the common law as it is accepted there. Indeed, whenever a by-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights, or endangering the security of individuals or the public, a statute or other special authority, emanating from the creating power, must be shown to legalize it, either expressly or by implication."

There are further requisites to the validity of a by-law. It must not disturb vested rights. *Kent* v. *Quicqksilver Mining Co.,* 78 N. Y. 159. It must not operate retrospectively. *People* v. *Detroit Fire Dept.,* 31 Mich. 458. It must operate equally upon all persons of the class which it is intended to govern. *People* v. *Young Men's Father Matthew Total Abstinence Benev. Soc. No. 1,* 41 Mich. 67, 1 N. W. 931; *Goddard* v. *Merchants Exch.,* 9 Mo. App. 290; *Budd* v. *Multonomah St. R. Co.,* 15 Ore. 413, 15 Pac. 659, 3 Am. St. Rep. 169. It must not be unreasonable, oppressive or extortionate. *Shannon* v. *Howard Mut. Bldg Assoc.,* 36 Md. 383; *State* v. *Overton,* 24 N. J. L. 435, 61 Am. Dec. 671; *Citizens Mut. Loan, etc., Assoc.* v. *Webster,* 25 Barb. (N. Y.) 263; *People* v. *Throop,* 12 Wend. (N. Y.) 183; *Buffalo* v. *Webster,* 10 Wend. (N. Y.) 100; *Forrest City United Sand, etc., Assoc.,* v. *Gallagher,* 25 Ohio St. 208; *Hagerman* v. *Ohio Bldg., etc., Assoc.,* 25 Ohio St. 186. See 10 Cyc., pp. 355-357, for numerous citations to cases holding particular by-laws reasonable and valid, or unreasonable and invalid according to the peculiar facts of these cases. An excellent summary of the requisites to the validity of by-laws is also to be found there. It is believed, however, that none of the cases there cited involves the particular question decided in the principal case.

The principal case seems to be in accord with the policy of the American law on the subject of the inspection of corporate books—the policy exhibited when the American courts refused to follow the old common law doctrine that in the absence of statutory enactment the shareholders have no right to inspect the corporate books for the purpose of ascertaining whether the company's affairs are being properly managed. *Rex* v. *Master and Wardens of the Merchant Tailors' Company,* 2 Barn. & Adol. 115. To put any other interpretation upon the effect of the by-law than to hold it invalid would greatly jeopardize the interests of the stockholders and would put a dangerous weapon into the hands of the directors. Once grant the directors this power and it would be difficult to properly circumscribe them in the exercise of it. Since a stockholder has no right to inspection if he seeks it from improper

motives, and since the courts will grant him the right to inspect only when he has a substantial interest in the corporate affairs, it would seem that such a by-law as that in the principal case could serve no useful purpose.

R. T. H.

A SINGLE ACTION OR SUCCESSIVE ACTIONS FOR A NUISANCE.—A very interesting case in the law of nuisance as illustrating the difficulties courts experience in distinguishing injuries which are original and permanent from those which are continuing and intermittent is that of *Pickens* v. *Coal River Boom & Timber Co., et al.* (1909), — W. Va. —, 65 S. E. 865. The facts are as follows, plaintiff, who owned a mill situated on the Coal River, brought an action against two boom companies, the one owning and the other leasing a certain boom on the said river below his mill, to recover damages for lessening the fall of water over his dam and thus the grinding capacity of his mill by the piers and boom holding and backing up in the stream large quantities of sand and sediment. The works of the defendant were constructed properly, but after the dam and mill, and were operated without negligence. The boom companies were corporations of the state of venue chartered under what is known as the Boom Act, Laws of West Virginia, 1877, page 189, c. 121; West Virginia Code Annotated, Chapter 54A, for the purpose of erecting and operating a boom in the Coal River. This act provides for the creation of corporations for booming logs and specifies that such corporations may construct "Any boom or booms with or without piers, dam or dams, in the rivers, creeks or other streams" within certain counties, "which may be necessary for the purpose of stopping and securing boats, rafts, logs, masts, spars, lumber and other timber," except in navigable streams. The act further provides, "That nothing in this act shall be so construed as to deprive the owners of mill property, and other proprietors on the said river and branches thereof from recovering damages for injury to their property by the said corporation, their agents or employees."

This case is the last of a series of cases against these very defendants, deciding the question of the right of one whose mill or other property is injured by the construction and maintenance of a boom in a proper manner to recover for the same. *Rogers* v. *Coal River Boom & Driving Company* (1894), 39 W. Va. 272; *Rogers* v. *Same* (1895), 41 W. Va. 593; *Pickens* v. *Coal River Boom & Timber Co.* (1902), 51 W. Va. 445.

In the principal case, the court in its opinion discussed two extremely difficult and perplexing questions, first, to what extent does legislative authority to do an act, which would otherwise be an abatable nuisance, operate to shield those to whom authority is given from liability for damages for injuries suffered by others therefrom, and, second, whether the construction and injury were such as to compel the plaintiff to seek all his damages in one action, or to allow him to recover in successive actions. As there is no decided agreement of authorities on these questions, it is not strange that in a case involving both of them there should have been a difference of opinion between the judges and that a dissenting opinion should have been filed by Judge WILLIAMS.